COURT OF JUSTICE OF THE EUROPEAN UNION
RESEARCH AND DOCUMENTATION DIRECTORATE
Translation funded by the Justice programme of the European Union

FLASH NEWS 2/18

NATIONAL DECISIONS OF INTEREST FOR THE UNION

OVERVIEW OF MARCH AND APRIL 2018

Poland – Administrative supreme court

Immigration, asylum and border control - International protection - Decision ordering return to the country of origin

The Administrative Supreme court was referred an appeal in cassation, filed against the judgment of an administrative court having confirmed the decision to return with a prohibition on entry, rendered with regard to an unlawfully residing third-country national.

The Administrative Supreme court stated that the competent authority had wrongly not applied the provisions of regulation no. 604/2013. In fact, a decision to return cannot be taken with regard to an applicant for international protection having been transferred to another Member State, before a negative decision about his application for international protection has been delivered. Therefore, the said court annulled the contested decision.

Naczelny Sąd Administracyjny, ruling of 13.03.2018, II OSK

Italy – Constitutional Court

Right to an effective remedy - Damages for exceeding reasonable time limit

The Constitutional Court ruled that article 4 of law no. 89/2011, conferring the right to compensation in the event of non-compliance with the reasonable time-limit for judgment, was incompatible with the Constitution, insofar as this provision did not provide for the possibility to file a request for compensation during the procedure.

In fact, the law in question provided for the inadmissibility of such a request, if the party concerned fails to have requested the judge beforehand for the adoption of measures to accelerate the procedure, without the latter being obliged to necessarily grant the same.

Belgium – Court of cassation

Competition - Request for damages owing to the harm caused by an agreement to the Union - Access to the Commission's file

The Court of cassation was referred an appeal in the context of an action relating to liability filed by the Union against four lift installers whose services it had obtained, following a decision of the Commission having established an agreement between the latter.

Based on the case-law of the Court of Justice relating to the access to documents, the Court of cassation dismissed the appeal filed by the installers against the interlocutory judgement of the court of appeal having ordered them to send confidential documents of the investigation file of the Commission in view of the production of evidence of the damage by the Union. The court of first instance had, after having questioned the Court (ruling C-199/11), dismissed the action relating to liability, in the absence of evidence of the alleged damage.

*Hof van Cassatie, ruling of 22.03.2018, no. C.16.0090.N **(NL)***

Germany – Federal Court of Justice

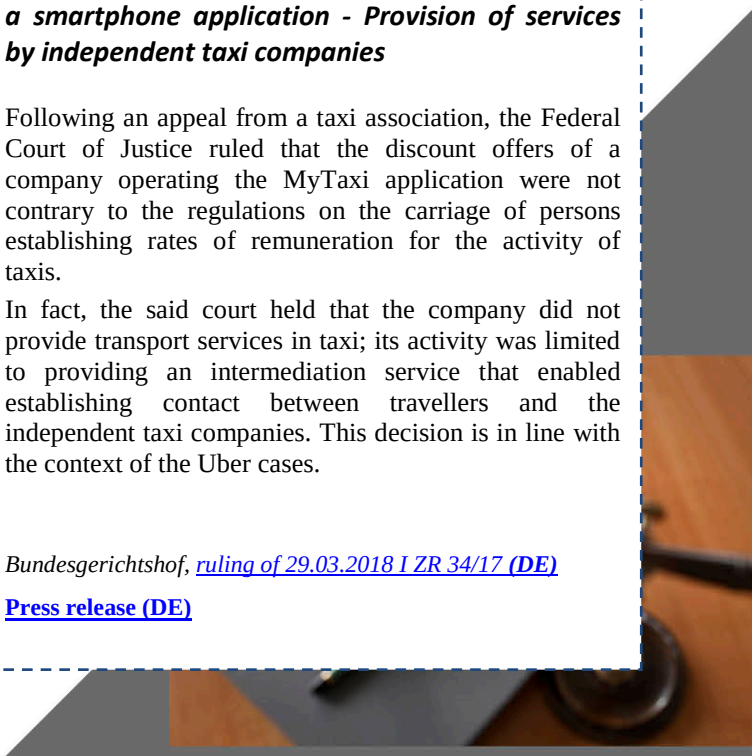
Carriage of persons - Intermediation services using a smartphone application - Provision of services by independent taxi companies

Following an appeal from a taxi association, the Federal Court of Justice ruled that the discount offers of a company operating the MyTaxi application were not contrary to the regulations on the carriage of persons establishing rates of remuneration for the activity of taxis.

In fact, the said court held that the company did not provide transport services in taxi; its activity was limited to providing an intermediation service that enabled establishing contact between travellers and the independent taxi companies. This decision is in line with the context of the Uber cases.

*Bundesgerichtshof, ruling of 29.03.2018 I ZR 34/17 **(DE)***

Press release (DE)



Spain – Supreme court

Social security - Migrants workers - Coexistence of different health insurance schemes

Having received an appeal in cassation, the Supreme court gave a ruling on the terms of the coexistence of the European Health Insurance Card for the citizens of the countries of the European Economic Area and private health insurance.

According to the said court, when one of these citizens receives medical assistance in a public Spanish establishment and only invokes his private insurance, without having shown his European health insurance card, the provision of the service is considered to be private in nature and the reimbursement will be made on this basis.

*Tribunal Supremo, Sala de lo Civil, ruling of 11.04.2018, STS 1363/2018 **(ES)***

France – Council of State

Nationality - Acquisition - Decree of opposition to the acquisition for lack of assimilation

The Council of State confirmed the legality of a decree of the Prime Minister having denied French citizenship to the applicant, on the grounds that she had refused to shake hands with the secretary general of a prefecture as well as that of an elected member of a commune of the department having come to welcome her during the French citizenship reception ceremony.

Considering that the behaviour of the person concerned, at a symbolic place and time, showed a lack of assimilation, the Council of State ruled that the Prime Minister had correctly applied the provisions of article 21-4 of the civil code.

*Council of State, ruling of 11.04.2018, no. 412462 **(FR)***

Bulgaria– Constitutional Court

EU-Canada free trade agreement - Applicability in the national legal order - Direct effect

The Constitutional Court, having received an appeal on the initiative of the President of the Republic in order to decide upon the interpretation of the Constitution before the ratification of the free trade agreement between the European Union and Canada (CETA) by Bulgaria, ruled that such a type of commercial agreement did not give the European Union constitutional competences and should thus not be ratified by a qualified majority by the National Assembly.

In addition, the said court highlighted that as a mixed agreement, the CETA is an integral part of the Union legal order and produces a direct effect in national law as a source of Union law and not as an international agreement ratified according to the constitutional order pursuant to article 5, paragraph 4, of the Constitution.

*Konstitutsionen sad, ruling of 17.04.2018, no. 7 **(BG)***

THIRD STATES

Canada – Supreme court

Judicial cooperation in civil matters – The Hague Convention - Habitual residence of the child

The Supreme court of Canada delivered a judgment in which it provided guidelines relating to the determination of the habitual residence of the child in view of the The Hague Convention on the Civil Aspects of International Child Abduction. In this case, the children had left their State of residence, which was Germany, to go to Canada, accompanied by their mother, who later decided to not return to Germany.

Contrary to the lower courts, which had put the intention of the parents first in the determination of the habitual residence of the child, the Supreme court considered that all the relevant circumstances should be taken into account, like the connections of the child with each of the countries, the duration, frequency, and the reasons and conditions of the child's stays there.

By adopting a hybrid approach between the intention of the parents and what the children wanted, the Supreme court of Canada aligns its case-law mainly to that of the European Union, the United Kingdom, Australia and the Unites States.

Supreme court, judgment of 20.04.2018 Office of the Children's Lawyer v. Balev, 2018 SCC 16 ***(EN)*** ***(FR)***

United States – Supreme court

International law- Liability of foreign companies domiciled abroad - Respect of the principle of separation of powers

The Supreme court of the Unites States held that the foreign companies domiciled abroad cannot be held accountable based on the Alien Tort Statute for violations of international law.

By following the test established in the *Sosa v. Alvarez-Machain* case, the Supreme court held that in the absence of a provision of "specific, universal and obligatory" international law requiring a liability of the company, it is, as a rule, the responsibility of the legislator and not that of the judicial power to create new rights of action, in accordance with the principle of separation of powers. Such is the case particularly when the case pertains to matters of foreign policy that normally fall under the competence of the Congress.

*US Supreme Court, ruling of 24.04.2018, Jesner et al. v. Arab Bank, PLC, No. 16–499 (****EN****)*

DECISIONS PRIOR TO 1ST MARCH 2018

Greece – Court of cassation

Customary international law - Seizure of a bank account belonging to the Libyan State - Immunity from execution

This ruling constitutes an application of the principle drawn from the customary international law, according to which it is prohibited to seize the property belonging to a State and used for purposes relating to the exercise of a diplomatic activity. After having recalled the distinction between the property related to the commercial and economic activity of a State, which can be seized on an exceptional basis, and the immunity from execution of property allocated for the exercise of public functions, like bank accounts of a diplomatic mission, the Court of cassation dismissed the appeal referred to it.

In fact, based on the Vienna Convention on Diplomatic Relations, read in conjunction with the civil codes and civil procedure, it considered that the seizure of a bank account belonging to the Libyan state located on Greek territory and whose funds were meant for financing of the diplomatic mission, was illegal.

Areios Pagos, apofasi tis 29.11.2017, 1937/2017 ***(EL)***

Ireland – High court

Asylum policy - Refugee status - Naturalised citizen - Family reunification

The High court refused the applications for family reunification that were referred to it based on article 18 of directive 2011/95, on the grounds that the applicants had automatically stopped being refugees, as a result of having obtained Irish citizenship. It stated that, in this situation, there is neither an obligation nor a necessity to make a declaration officially revoking the refugee status.

The court added that continuing to extend the benefit of article 18 to the former refugees, who have now become Irish citizens, would be reverse discrimination with respect to the other Irish citizens.

High Court, M.A.M. (Somalia) & ors -v- The Minister for Justice and Equality, ruling of 26.02.2018, [2018] IEHC 113 ***(EN)***

Belgium – Labour court of Brussels

Social policy - Equality of treatment - Discrimination based on disability

In a case pertaining to the dismissal of an employee having requested to be reinstated to her former position with suitable working hours, after having been absent for a long period of time due to cancer, the labour court of Brussels qualified the physical status of this employee as "disabled" under directive 2000/78. The said court then ruled that the absence of reasonable arrangements to allow the employee to be reinstated to her former position after her illness and her dismissal constituted a prohibited discrimination based on disability.

Arbeidshof Brussel, ruling of 20.02.2018, no. 2016/AB/959